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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/748,168

12/31/2003

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Q77182

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23373 7590 05/21/2010
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EXAMINER

PAN, YUWEN

ART UNIT

PAPER NUMBER

2618

NOTIFICATION DATE

DELIVERY MODE

05/21/2010

ELECTRONIC

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1 RECORD OF ORAL HEARING
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3 UNITED STATES PATENT AND TRADEMARK OFFICE
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5
6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
8
9

10 *Ex parte* YONG-SUK KIM, WON-YONG YOON,
11 KYUN-HYON TCHAH, DOO-SEOP EOM,
12 WON-HEE LEE, TAE-JIN LEE,
13 and YANG-ICK JOO
14

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16 Appeal 2009-011343
17 Application 10/748,168
18 Technology Center 2600
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21 Oral Hearing Held: April 20, 2010
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23

24 Before ROBERT E. NAPPI, ELENI MANTIS MERCADER, and
25 BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.
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27
28 APPEARANCES:
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31 ON BEHALF OF THE APPELLANT:
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1 The above-entitled matter came on for hearing on Tuesday, April 20,
2 2010, commencing at 9:53 a.m., at the U.S. Patent and Trademark Office,
3 600 Dulany Street, Alexandria, Virginia, before Victoria L. Wilson, Notary
4 Public.

5 THE USHER: Calendar number 55. Appeal number 2009-011343.

6 Mr. Kiblawi.

7 (Discussion off the record.)

8 JUDGE NAPPI: You have 20 minutes. You may begin when ready.

9 MR. KIBLAWI: Thank you very much.

10 JUDGE NAPPI: I'm not always sure if I'm right with the light so if it starts
11 flashing and we don't seem to be indicating, just keep going.

12 MR. KIBLAWI: Thank you, your Honor.

13 And good morning, Your Honors. My name is Fadi Kiblawi. I'm representing
14 the Appellant here, Samsung Electronics under the assigning of the instant
15 application.

16 I would like to thank you, your Honors, for today's hearing giving me a chance
17 to present our arguments. I'm going to try and narrow the issue down to
18 something very simple today and, if it may please the Court, I would like to
19 begin by possibly a brief introduction of the claimed invention and how I
20 believe it distinguishes, in general, over the prior art.

21 The instant invention relates to a handoff processing in a short range wireless
22 communication system, for example, and only by way of example, a Bluetooth
23 system or network.

24 A handoff refers to a process by which a terminal, such as a mobile terminal or
25 a mobile device, which is connected to a network via an access point moves
26 from the wireless range of that access point -- we will call it the first access

1 point -- to a range -- wireless range of the second access point and it's -- the
2 handoff processing is the changing of the link that in normal devices is
3 interconnected, interlinked with the first access point, and when it goes to the
4 range of the second access point, changes its connection and links up with the
5 second access point.

6 Now, generally speaking, such handoffs in a short-range wireless
7 communication system are referred to as hard handoffs where, before
8 establishing this -- the new link with the second access point, the mobile
9 terminal -- the terminal disconnects, breaks its connection, with the first access
10 point, so there is going to be a period of time where the mobile terminal is not
11 connected to any access point.

12 Now, the problem that presents is that during this period of time, obviously,
13 the mobile terminal cannot exchange data with the network vis-a-vis any
14 access point.

15 So, for example, downstream data, that's data that's been received by the
16 terminal, that may be routed to the access point -- to the first access point to be
17 transmitted to the mobile terminal if the mobile terminal at this point is already
18 disconnected from the first access point and, therefore, that data is lost.

19 Now, this problem is particularly pronounced in environments in which the
20 wireless conditions are poor, such as that period of time where the mobile
21 terminal is connected is prolonged and, therefore, more data is potentially lost.

22 So, accordingly, our claimed invention proposes to solve this problem by,
23 simply stated, by buffering data that's exchanged with the external device.

24 For example, that old access point, when it receives data to be transmitted to,
25 to be exchanged with, the network or the mobile terminal buffers that data
26 such that if -- such that when the handoff processing is completed, that old

1 access point, for example, forwards that buffered data to the new access point
2 so that if any data is not transmitted to the mobile terminal, the new access
3 point is received -- is the recipient of that data and subsequently forwards that.
4 And I apologize. Stop me if you have any questions at any time.
5 As a result, there is no data lost since any they had not transmitted to the
6 external device or the terminal is forwarded to the new access point which is at
7 this point interlinked with the external device.
8 So, for example, the independent claim 1 recites, inter alia, a short-range
9 wireless communication system comprising the host controller interface
10 provided with the handoff buffer for buffering data and for exchanging said
11 data with the external device and a micro-controller for forwarding to a new
12 access point said buffered data.
13 And I want to sort of highlight this next portion. If a message indicating set of
14 completion of a connection with the external device is transmitted from the
15 new access point after a handoff occurs as the external device moves in a state
16 where the new access point is interlinked with the external device.
17 So, in other words, independent claim 1 recites a micro-controller performing data
18 forwarding in response to a message transmitted by the new access point
19 indicating a handoff completion.
20 So I would like to propose here that the issue in this case at this point is very
21 simple and that is whether a new access point in the cited reference --
22 references -- sorry -- transmits a message to an old access point indicating that
23 a handoff has been completed. And it is our -- in fact, it is our contention that
24 neither of the references Martini or Mitts, either alone or in combination,
25 suggest a message indicating set of completion of a connection with an
26 external device is transmitted from a new access point after a handoff occurs,

1 let alone forwarding buffered data if such a message is transmitted from the
2 new access point.

3 Now, if I can quickly go over Martini or just dismiss Martini since Martini is
4 not relied upon by the Examiner for a teaching of this feature and, in fact, a
5 review of Martini will indicate that there is no suggestion of forwarding
6 buffered data that's exchanged with the mobile terminal or from one access
7 point to another access point but only in response to such a message that
8 indicates a handoff completion.

9 So the Examiner relies on Mitts for a teaching of this limitation. Now, Mitts,
10 at figure 5, discloses, you know, an old base station -- I refer to it as an old
11 base station -- indicated by reference numeral 40 and a new base station
12 indicated by reference numeral 50.

13 Now, in this disclosed system, a mobile station, reference numeral 41, when it
14 moves from the wireless area of the first base station to the second base station
15 and, therefore, a handoff is performed from the first base station to the second
16 base station. In this disclosed system, the old base station buffers data to be
17 exchanged with the mobile station and forwards this buffered data to the new
18 base station.

19 So, you know, there are some features in this reference -- there are some --
20 there is some disclosure in this reference that may be relevant to our claim;
21 however -- well, let me go back for a second and specify the exact process
22 that's performed.

23 Now, "The old base station forwards this data to the new base station" -- and
24 I'm quoting from column 8, lines 26 to 28, which is cited by the Examiner in
25 the -- throughout both Office Actions and his Reply Brief -- "as a response to a
26 last message, the last message being transmitted from the mobile device, not

1 from the new base station. As a response to the last message and to the
2 signaling data on the handover that indicate the new base station, the old base
3 station transmits to the new base station the cells that were in the
4 first-in/first-out buffer."

5 Now, the Examiner obviously does not cite the last message for a teaching of
6 our message -- of our claimed message, since the last message is not forwarded
7 from the -- new access point -- is not transmitted from the new access point
8 and since that last message does not indicate that a handover has been
9 completed. Rather, the Examiner cites the signaling.

10 Now, the signaling, I'm going to quote it again, "signaling data on the
11 handover that indicates the new base station." Now, there is no suggestion, no
12 disclosure, in Mitts here or elsewhere that states that the signaling data is, A,
13 indicates that handover has been completed or, B, is even transmitted after the
14 handover has been completed. In fact, it is totally -- it is completely possible
15 that -- it is within the realm of possibilities that that message, that signaling,
16 could take place at any point during, before or after the handover processing.
17 It does not necessarily have to take place before the -- before the -- after the
18 handover is completed and to indicate the handover has been completed.

19 Rather, it is just for -- serves one purpose and that's to indicate the new access
20 point such that the old access point knows where to forward its data. Now --

21 JUDGE MANTIS MERCADER: Counselor --

22 JUDGE NAPPI: Doesn't it say, "on the handover"?

23 JUDGE MANTIS MERCADER: Go ahead. I'm sorry. Go ahead.

24 JUDGE NAPPI: Doesn't it say, "on the handover -- to signaling on the
25 handover"?

26 MR. KIBLAWI: Yeah -- well, I'm not --

1 JUDGE NAPPI: Doesn't that go against what you were just saying as far as --

2 MR. KIBLAWI: Well, no, not --sorry.

3 JUDGE NAPPI: -- not being before the handover?

4 MR. KIBLAWI: I'm not -- I'm not contending that it is not on the handover.

5 Definitely -- the information is definitely about the handover, it is on the

6 handover. But my point is that it does not necessitate that that message has

7 taken place that is transmitted after the handover is completed, nor is it -- does

8 it specify -- nor does it necessitate, and inherency requires necessity, because

9 there is no explicit disclosure for the Examiner to -- to the extent that he relies

10 on an inherent disclosure, requires necessity, and that it does not necessarily

11 follow from this disclosure that this message indicates that the handover has

12 been completed. Rather -- sorry.

13 JUDGE MANTIS MERCADER: So if you look at the sentence before that --

14 MR. KIBLAWI: Yes.

15 JUDGE MANTIS MERCADER: -- "a handover is effected after this where

16 the mobile unit sends to the base station a last message that describes the last

17 successfully received and forwarded cells."

18 MR. KIBLAWI: Okay.

19 JUDGE MANTIS MERCADER: So, therefore, the mobile is not

20 disconnected. It says I have received this and now we are moving on. So --

21 MR. KIBLAWI: Yeah, you are making my argument for me.

22 JUDGE MANTIS MERCADER: But why isn't that finished of the connection

23 start of a new connection? It's already been done.

24 MR. KIBLAWI: Yeah.

1 JUDGE MANTIS MERCADER: So, therefore, we are moving on and the
2 handover has now taken place and now we are going to transmit whatever is in
3 the buffer.

4 MR. KIBLAWI: Right. Well, if I may respond, to begin with, there is no
5 temporal relationship provided in terms of when the last message is sent in
6 relation to when the signaling is sent.

7 So, for example, last message is sent clearly before the handover is completed
8 because it is sent from the mobile unit to the old access point. So that's before
9 the handover has been completed. Now, as I described before, just because
10 that mobile device disconnects from the old access point does not mean that
11 the handover has been completed.

12 As I mentioned before, there is that lag time where it is not connected to the
13 new -- to the new access point as of yet.

14 JUDGE MANTIS MERCADER: But it has to connect to the new access point
15 before it can receive the information from the buffer.

16 MR. KIBLAWI: Well -- I'm sorry. What this -- what this reference is stating
17 is that the old base station receives that last message.

18 JUDGE MANTIS MERCADER: Right. Exactly. But then it has to connect
19 to the new access point in order to receive whatever has been buffered.

20 MR. KIBLAWI: Yes -- well, the old base station has to connect to the new
21 base station. And you are right. I'm sorry. I understand what you are saying
22 now. You are correct --

23 JUDGE MANTIS MERCADER: Right.

24 MR. KIBLAWI: -- that it has to connect.

25 JUDGE MANTIS MERCADER: So, necessarily --

26 MR. KIBLAWI: That's the handover process. I'm not denying that.

1 JUDGE MANTIS MERCADER: So, necessarily, the handover has to have
2 taken place before you receive the buffer data. Otherwise, what's the point?

3 MR. KIBLAWI: I see what you are saying. I see what you are saying. Well,
4 okay. I guess I have interpreted this a little bit differently.

5 The way I interpreted it as one possible way this could take place is that the
6 last message could be sent before the handover process is complete. You seem
7 to be stating that the last message seems to be sent after the handover is
8 completed.

9 JUDGE MANTIS MERCADER: Right.

10 MR. KIBLAWI: I just don't see that from this disclosure. I think it is within
11 the realm of possibility -- in fact, the disclosure itself describes that before the
12 handover is completed, it disconnects -- sorry -- before the mobile device
13 connects to the new terminal, it disconnects from the old terminal. Therein
14 lies the problem, the problem being solved by forwarding the data.

15 So if -- by its own disclosure, it provides as a possibility that before the
16 handover is completed, the mobile device disconnects from the -- from the old
17 access point or the old base station, which is the whole purpose of buffering
18 the data. If the mobile -- if the mobile device was still connected to the old
19 base station while -- after the handover has been completed, after it's
20 completed connection with new base station, there would be no purpose to
21 forward the buffered data because it can just get it from the old base station.

22 JUDGE MANTIS MERCADER: Right, right, right. So it has disconnected.

23 MR. KIBLAWI: Well, after it receives the last message, it disconnects from
24 the old base station because it receives the last message from the -- the old
25 base station receives the last message from the mobile device; therefore,

1 necessarily, it is still connected to the old -- the mobile device and the old base
2 station are still connected.

3 JUDGE NAPPI: I just had one other response to what you are saying before,
4 that this doesn't necessarily inherently -- that's not required for this rejection.
5 This is a 103 rejection. So, in going back to specific language here, it says,
6 "and to the signaling on the handover." Even if that doesn't necessarily require
7 that handover has been completed, doesn't that suggest the handover is
8 completed, especially given what my colleague was just describing as far as
9 you need to have closed out with the first base station.

10 MR. KIBLAWI: Okay. Well, if the Examiner is positing that -- that from this
11 disclosure it is obvious that that -- that that's data on the handover --

12 JUDGE NAPPI: We do have a 103 rejection. Am I off base on that? I
13 sometimes screw things up with the computer.

14 MR. KIBLAWI: No, it is a 103 rejection.

15 JUDGE NAPPI: Okay.

16 MR. KIBLAWI: There are two references. But I suppose my point would be
17 that he has not made that statement before, that just because -- you know, just
18 because this falls in the rubric of an obviousness rejection does not -- he hasn't
19 cited this specific portion as a -- as a source for, you know, an obvious
20 disclosure of that data being data indicating that the handover has been
21 completed, thus, it would be our position that that would be a new ground of
22 rejection.

23 JUDGE MANTIS MERCADER: He cited this portion.

24 MR. KIBLAWI: For its explicit disclosure. He stated -- well, if I may -- if I
25 may state, in the final office action at page 3, he actually argues inherency. He
26 explicitly discloses inherency. So our response based on his argument was on

1 inherency at this portion right here. And that actually leads me to the main
2 argument I want to focus on, which is not -- the signaling data, it is our
3 position, isn't -- doesn't only fail to anticipate message indicating completion
4 of a set, but our claim also necessitates that that message is transmitted from
5 the new base station to the old base station; okay?

6 Now, there is nowhere -- no suggestion in here that the old -- the new base
7 station transmits the signaling data to the old base station, and it is our reliance
8 on the Examiner's rejection where he bases his rejection on inherency on page
9 3 of the Office Action, he states that it is inherent that that the new base station
10 transmits that signaling to the old base station.

11 So I want to contest that point, if I may, may it please the --

12 JUDGE MANTIS MERCADER: And what about your prior art? That's
13 admitted prior art that you have to get -- I mean you admit in your disclosure
14 that you get an acknowledgment before the handover; right?

15 MR. KIBLAWI: Well, I can't speak to that as of yet because that would be --
16 that would also be a new ground of rejection. He hasn't cited our prior --

17 JUDGE MANTIS MERCADER: But you admit that that's how it's done;
18 right? I mean that is how it is done.

19 MR. KIBLAWI: Well, in -- in our disclosure, which is --

20 JUDGE MANTIS MERCADER: No. No. In the prior art. In the prior art.
21 Figure 1.

22 MR. KIBLAWI: Okay. And you are talking -- you are referring to our
23 specification figure 1.

24 JUDGE MANTIS MERCADER: Figure 1.

25 MR. KIBLAWI: Well, you know, if I had the opportunity to respond to such a
26 rejection citing our art against us or citing -- not our art, citing what you --

1 what allegedly is our -- applicant admitted prior art, then I would respond in
2 kind, but he hasn't made that rejection such that it would be a new ground of
3 rejection. For example --

4 JUDGE MANTIS MERCADER: But what I am saying is not new. It is
5 acknowledgment signal. This is not new, this is conventional, that you get this
6 acknowledgement signal.

7 MR. KIBLAWI: But the Examiner hasn't --

8 JUDGE MANTIS MERCADER: But what is new is that what your invention
9 has is this buffer, right, that receives this acknowledgment signal?

10 MR. KIBLAWI: Well, what's new is that in response to a message indicating
11 the handover has been completed, and that's very important in this -- in our
12 claim, being received from the new access point, the data is forwarded. That's
13 not in our Applicant admitted prior art. It's not. And if the Examiner wants to
14 cite that, that would be a new ground of rejection and at which point we can
15 respond.

16 JUDGE NAPPI: You know we have the authority to write new grounds of
17 rejection so I would think it would be nice if you could explain to us why that
18 rationale wouldn't apply, protect -- maybe to save us from making an
19 imprudent new grounds of rejection.

20 MR. KIBLAWI: Well, I definitely understand that and if I may suggest, to be
21 quite honest, I hadn't thought of that and we hadn't received that rejection. If I
22 may perhaps submit a Supplemental Brief in the next -- by the end of the week
23 for your consideration on that point, I can address a potential rejection citing
24 our alleged Applicant admitted prior art.

1 JUDGE NAPPI: No, we haven't made the rejection yet so it would be -- if we
2 made the new grounds of rejection, you would have the opportunity to respond
3 in a request --

4 MR. KIBLAWI: I would appreciate that. Thank you.

5 JUDGE NAPPI: Yeah. But, you know, a lot of times we ask the questions
6 because we want to understand the art better and -- you know, your disclosure
7 has admitted that this is conventional and we wanted -- we are faced with the
8 situation we have a disclosure that admits something is conventional and then
9 we have an argument that this same feature is something that is novel and we
10 have problems reconciling those two and that's why we are asking the
11 questions.

12 MR. KIBLAWI: Yes, I understand that and I appreciate that. And I suppose
13 that, another, you know, argument I would like to forward here is that in that
14 reference Mitts, they proposal in their own -- in their own art, in their own
15 admitted art, in their own admitted prior art -- I apologize -- that they also have
16 a system whereby a message -- a mobile representative -- I don't want to
17 misstate the term. I believe they refer to it as a mobile representative, MR.
18 I'm referring to fig 2 of Mitts.

19 JUDGE MANTIS MERCADER: Yeah, I mean I read the arguments
20 regarding that and I mean that's not the point. The point is it is column 8 that
21 the Examiner is pointing to.

22 MR. KIBLAWI: Yes.

23 JUDGE MANTIS MERCADER: I mean I read -- we all read the Brief and we
24 understand what you are saying with respect to that. Yes, that doesn't point to
25 what your invention is. But with respect to column 8, I think it is a different
26 story because it seems like it says exactly what you are claiming and we

1 don't -- we don't see the distinction because, you know, what else could the
2 signaling be other than the handover is complete, now send over whatever has
3 been buffered.

4 MR. KIBLAWI: Well, if I may --

5 JUDGE MANTIS MERCADER: I mean what else could the signaling be?
6 Can you tell us?

7 MR. KIBLAWI: Well, okay, the signaling could just indicate the address or
8 the identity of the new access point. That's all that that old access point needs.

9 JUDGE MANTIS-MERCADER: Why would that be?

10 MR. KIBLAWI: Because the old access point needs to know where it is
11 forwarding the buffered data. So all it needs -- the only information it needs
12 and the only thing that's explicitly disclosed is that information is on --
13 identifies the new access point. It doesn't state that the -- that the handover has
14 over completed. And, in fact, looking at that method, I don't see any
15 requirement that the handover has to be completed. In fact, the last message --
16 the last message is sent from the mobile unit before the handover is completed
17 for the reasons stated prior because the mobile unit is still connected to the
18 old access point. So that message is --

19 JUDGE MANTIS MERCADER: But it seems to me that the mobile unit is
20 sending to say that's it, I received -- it says I described the last successfully
21 received or forwarded cell, the last message. It says I have received all this
22 information. That's the end of the story. And now I'm sending you a last
23 message and a signaling data. Now I'm telling you it is all done.

24 Now, you can -- I'm connected now. I'm going to connect to the new access
25 point and now you send me the FIFO. Why isn't that -- we have completed
26 now.

1 MR. KIBLAWI: Okay. Let me ask you something, though. Theoretically,
2 the signaling could be received at the same time as the last data; correct? And
3 even from the same source. In fact, the Examiner admits that. In his advisory
4 action, he states, and I'm going to quote him -- he states, "such signaling data
5 could be sent from . . . the -- or the mobile" -- sorry -- "or the mobile unit
6 could signal the old base station that it has handoffs from the new base
7 station."

8 The Examiner himself admits that it could be transmitted from the mobile
9 station, which goes to my other argument that, you know, while the Examiner
10 in the Final Office Action argues that it's inherent that the new base station
11 transmits the signaling, he contradicts his argument of inherency in the
12 Advisory Action when he proposes a different possibility, i.e., the mobile unit
13 sending the signaling data, but that's a different point.

14 Let me go back to your answer. Theoretically, the last message and the
15 signaling data could be sent at the same time. There is nothing in the reference
16 that necessitates the signaling data being sent after the handover is completed.
17 There is nothing in the reference that states that and, in fact, it sort of couples
18 that signaling with that last message, which is necessarily transmitted before
19 the handover is completed.

20 JUDGE MANTIS MERCADER: What's the criticality of that? I mean
21 whether it is completed before or after, who cares? The important thing is that
22 we have the information from the FIFO that's it's going to be sent now, so who
23 cares if it is before or after? Under obviousness, what's the significance?

24 MR. KIBLAWI: Well, if we were given that obviousness rejection, you know,
25 I would like -- as I mentioned earlier, I would like an opportunity to respond to
26 that but, you know -- I suppose my question would be, in response to a prior

1 art rejection, it is just not there. Whatever the significance may be, you know
2 -- I don't want to put anything on the record that --

3 JUDGE MANTIS MERCADER: But I'm saying it is an obviousness rejection
4 so wouldn't that be an obvious variation -- it could be sent before or after? The
5 significance is -- is that you get a signal saying send us new information now.

6 MR. KIBLAWI: Well, your Honor, I understand that and, as I mentioned
7 before, I never thought of that before and, if I could, you know -- so it was not
8 -- since he was relying on explicit disclosure and then an inherent disclosure, I
9 didn't assess it from an obviousness perspective.

10 And if he was to make that obviousness rejection, then I would posit at this
11 point he hasn't met his prima facie burden for an obviousness rejection by
12 providing the rationale, a rationale for -- for such a modification of the explicit
13 disclosure of the reference.

14 Now, what I do know is that the Examiner has provided a rejection based on
15 inherency, as can be seen on page 3 of the Final Office Action, and my point
16 for this current rejection -- for this current rejection, the state of it is right now,
17 my point is that while the Examiner states that it's inherent that signaling data
18 is transmitted from the new handover, that's in the rejection, that's what my job
19 is to respond to, you know, our point is that the Examiner himself admits that
20 it is not inherent in the advisory action when he proposes an alternative
21 method, i.e., the mobile device sending --

22 JUDGE MANTIS MERCADER: And I would agree with you if it was under
23 a 102 but it is not; it is under a 103. So just because the Examiner said it is
24 inherent that that section teaches that, it is still under a 103.

25 MR. KIBLAWI: Okay. Well, if the Examiner -- even though the Examiner
26 does not state that it is obvious that the signaling data is transmitted from the

1 new station or that the signaling data is -- indicates that the handover has been
2 completed, I would posit at this point that the -- that the Examiner has not
3 established a prima facie obviousness rejection because he has not provided us
4 the rationale for modifying the explicit disclosure of the reference to what you
5 suggest may be an obvious modification, and because he has not provided that
6 rationale, he hasn't met his burden.

7 And by him not meeting his burden, what am I to do? You know, I can't
8 respond to potential rejections, I can only respond to rejections that are on the
9 table; correct?

10 So, the rejection on the table -- and, again, I apologize for not being able to
11 answer your questions fully -- is an inherency rejection and I would like to -- I
12 would like to, you know, request your Honors', you know, patience with me
13 right now in making that inherency argument.

14 But in terms of -- in terms of the obviousness of it, you know, you are trying
15 To argue -- you are trying to ask me why is it significant and when I have
16 that rejection, I would be able -- I would be able to fully respond. At this
17 point I don't want to put anything on the record that might not be fully
18 accurate.

19 JUDGE NAPPI: Any further questions?

20 JUDGE BAUMEISTER: I'm good.

21 JUDGE NAPPI: Thank you very much for your time.

22 MR. KIBLAWI: Thank you for this opportunity. My first time and I feel like
23 you guys were a little easy on me.

24 JUDGE MANTIS MERCADER: You can stay longer if you like.

25 MR. KIBLAWI: I have 20 minutes; right?

26 JUDGE NAPPI: You went over but that's fine.

1 MR. KIBLAWI: Oh, I did? That's what that light means.

2 JUDGE NAPPI: Yeah.

3 Whereupon, the proceedings at 10:18 a.m. were concluded.

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